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ABSTRACT

Modifications are presented to a 1967 document that contained recommendations concerning academic freedom, academic responsibility, and tenure for faculty members in Texas public community and senior colleges and universities. The recommended standards constitute patterns or guidelines and are not binding on any institution and may be varied in any respect. Procedures concerning faculty dismissals and nonrenewals of nontenured faculty at the end of the term contract are also covered. The need for written terms of employment, information on due process proceedings in dismissal cases, and the issue of tenure during conditions of financial exigency and the phasing out of programs are addressed in appendices. (SW)

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Academic Freedom, Tenure, and Responsibility

for Faculty Members in
Texas Public Community and Senior
Colleges and Universities

REVISED: January 1979

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FOREWORD

Section 14 of the Higher Education Coordinating Act of 1965 states, in part: "To achieve excellence in the teaching of students at institutions and agencies of higher education, the (Coordinating) Board shall ... develop and recommend minimum standards for academic freedom, academic responsibility and tenure." Accordingly, in 1967 the Coordinating Board issued Policy Paper No. 1 on this topic.

This publication is a revision of that earlier document. The modifications were made after careful consideration of the recommendations of an advisory committee appointed to study the need for revisions. Also taken into consideration were the views expressed at a public hearing on November 19, 1975, on a proposed revision of the document and at a second hearing on September 12, 1977, on a proposed alternative. Written comments submitted to the Coordinating Board on both proposals were considered as well.

The standards set forth in this document constitute patterns or guidelines only. They are not binding on any institution and may be varied in any respect. An institution adopting policies and procedures relating to this subject matter may use or may discard any portion or portions of this document to the end that the institution's policies and procedures may be designed to fit the institution's particular educational mission, tradition, resources, and circumstances relevant to its character and role and scope. Final responsibility rests with the governing board to adopt if it chooses (and there is no state law or policy which requires that it do so) both general standards and specific institutional policies and procedures designed to enable students, faculty members, administrators and boards to work together effectively and harmoniously for the common objective of academic excellence.

ACADEMIC FREEDOM

Institutions of higher education are conducted for the common good. The common good depends upon an uninhibited search for truth and its open expression. Hence, it is essential that each faculty member be free to pursue scholarly inquiry without undue restriction, and to voice and publish individual conclusions concerning the significance of evidence that he or she considers relevant. Each faculty member must be free from the corrosive fear that others, inside or outside the university community, because their vision may differ, may threaten his or her professional career or the material benefits accruing from it.

Each faculty member is entitled to full freedom in the classroom in discussing the subject which he or she teaches but is expected not to introduce into his or her teachings controversial matters which have no relation to the classroom subject. Each faculty member also is a citizen of the nation, state and community; and when speaking, writing or acting as such, must be free from institutional censorship or discipline, subject to academic responsibility as hereinafter set out, and the faculty member should make it clear that he or she is not speaking for the institution.

ACADEMIC RESPONSIBILITY OF FACULTY MEMBERS

The concept of academic freedom for faculty must be accompanied by an equally demanding concept of academic responsibility of faculty. A faculty member has a responsibility to the institution, his or her profession, his or her students, and society at large. The rights and privileges of faculty

members extended by society and protected by governing boards and administrators through written policies and procedures on academic freedom and tenure, and as further protected by the courts, require reciprocally the assumption of certain responsibilities by faculty members. Some of those follow below:

(1) The fundamental responsibilities of a faculty member as a teacher and scholar include maintenance of competence in his or her field of specialization and the exhibition of such professional competence in the classroom, studio or laboratory and in the public arena by such activities as discussions, lectures, consulting, publications or participation in professional organizations and meetings.

(2) The exercise of professional integrity by a faculty member includes recognition that the public will judge his or her profession and institution by his or her statements. Therefore, the faculty member should strive to be accurate, to exercise appropriate restraint, to be willing to listen to and show respect to others expressing different opinions, and to avoid creating the impression that the faculty member speaks or acts for his or her college or university when speaking or acting as a private person.

(3) The constitutionally protected right of the faculty member, as a citizen, to freedom of expression must be balanced with the interest of the State, as an employer, in promoting the efficiency of the educational services it performs through its employees. A faculty member's comments are protected even though they may be highly critical in tone or content, or erroneous, but such statements are not protected free speech if they either substantially impede the faculty member's performance of his or her daily duties or materially and substantially interfere with the regular operation of the institution, or if they

are part of a continuing pattern of expression of such nature as to destroy the harmony and morale of a division, department or college. False statements made with knowledge of their falsity or in reckless disregard of the truth are not entitled to constitutional protection, and public statements may be so without foundation as to call into question the fitness of the faculty member to perform his or her professional duties.

(4) A faculty member should be judicious in the use of controversial material in the classroom and should introduce such material only as it has clear relationship to his or her subject field.

(5) A faculty member should be professional in his or her conduct in the classroom and in his or her relationships with students. The faculty member should maintain respect for the student and for the student's posture as a learner. The faculty member should make himself or herself appropriately available to the student for consultation on course work.

(6) A faculty member has the responsibility to provide timely and adequate notice of his or her intention to interrupt or terminate institutional services.

III

TENURE POLICY

Tenure means the entitlement of a faculty member to continue in his or her academic position unless dismissed for good cause. A specific system of faculty tenure should undergird the integrity of each academic institution. In Texas public colleges and universities, this tenure system should have these components:

(1) Beginning with appointment to the rank of full-time instructor or higher rank, the probationary period for a faculty member shall not exceed seven years. This period may include appropriate full-time service in all

institutions of higher education. This is subject to the provision that when, after a term of probationary service in one or more institutions, a faculty member is employed by another institution, it may be agreed in writing that his or her new appointment is for a probationary period of fewer than seven years (even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years). Tenure is obtained only by the affirmative action of the institution. At the conclusion of the probationary period, unless appropriately informed otherwise, the faculty member shall not obtain tenure. Prior to the beginning of the last year of the probationary period, the faculty member who has not received notice of a decision relating to receipt of tenure should make a written request for such a decision from the administration, and the administration should promptly respond. If the decision is not to award tenure, the faculty member is entitled to serve for a full academic year of twelve months following the term or semester in which the notice is received.

(2) Notice of non-reappointment, or of intention not to reappoint a faculty member, should be given in writing in accord with the following standards: (a) not later than March 1 of the first academic year of probationary service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination; (b) not later than December 15 of the second year of probationary service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination; (c) at least twelve months before the expiration of a probationary appointment after two or more years in the institution.

(3) Good cause for dismissal of a faculty member with tenure may include, but shall not be limited to the following:

- (a) professional incompetence,
- (b) continuing or repeated substantial neglect of professional responsibilities,
- (c) moral turpitude adversely affecting the performance of duties or the meeting of responsibilities to the institution, or to students or associates,
- (d) mental or physical disablement of a continuing nature adversely affecting to a material and substantial degree the performance of duties or the meeting of responsibilities to the institution, or to students or associates,
- (e) unprofessional conduct adversely affecting to a material and substantial degree the performance of duties or the meeting of responsibilities to the institution, or to students or associates,
- (f) bona fide financial exigency or the phasing out of institutional programs requiring reduction of faculty. When faculty dismissals are contemplated on grounds of financial exigency or program termination or reduction, there should be early, careful, and meaningful sharing of information and views with appropriate faculty representatives on the emergency of the need to terminate programs. Recommendations from such faculty representatives should be sought on alternatives available to the institution to ensure continuation of a strong academic program and to minimize the losses sustained by affected students and faculty members.

(4) A faculty member with tenure shall not be dismissed until he or she has received reasonable notice of the cause for dismissal and, except as specified in Appendix II and in the suspension provision in Appendix III of this paper, only after an opportunity for a hearing which shall meet the established procedures of due process and in which the institution shall bear the burden of proving by a preponderance of the evidence good cause for dismissal.

IV

FACULTY DISMISSALS

Institutions should establish proper procedures to apply to cases of faculty dismissal. These dismissal procedures apply to a faculty member who has tenure or whose term appointment has not expired at the time of the dismissal. It is recommended that in the Texas public college and university system such procedures have the following components:

(1) A bona fide effort by appropriate administrative officers and/or other persons or committees should be made to achieve a satisfactory resolution of difficulties through preliminary inquiry, discussion or confidential mediation.

(2) Should these efforts fail to achieve a satisfactory resolution and should the difficulties be considered by the administration to be serious enough to warrant dismissal, the due process procedures provided in Appendix III should be instituted. The burden of proof is on the institution to establish by a preponderance of the evidence the existence of good cause.

V

NON-RENEWAL OF NON-TENURED FACULTY

AT END OF TERM CONTRACT

If an institution establishes procedures to apply in cases of non-renewal

of non-tenured faculty members at the end of any term contract (other than a one-year only contract which has not been renewed), such procedures may have the following components:

(1) Although an institution is not legally required to give a non-tenured faculty member a reason for a decision not to make a reappointment for another contract term, or to provide a hearing, each faculty member is entitled under Texas law to see all of his or her personnel files and to obtain a copy of the information in these files at the expense of the person requesting it.

(2) A decision not to reappoint a non-tenured faculty member cannot be made in violation of the academic freedom of the individual or for a constitutionally impermissible reason, e.g., based on the race, creed, color or sex of the individual or made in retaliation for the faculty member's exercise of protected First Amendment rights. If a non-tenured faculty member makes allegations which if proved would establish a violation of academic freedom or the existence of a constitutionally impermissible reason for the decision not to reappoint, the faculty member is entitled to the due process procedures provided in the following subsections to determine the validity of his or her allegations. These allegations should be sent to the chief executive officer of the institution by the faculty member within a reasonable time after receipt of notice of the decision not to reappoint.

(3) The faculty member may request, and is entitled to, a preliminary consideration by a faculty committee of his or her allegations of a violation of academic freedom or the existence of a constitutionally impermissible reason. If the faculty committee determines after appropriate inquiry that there is no factual basis for the allegations of the faculty member, the matter should not be given further consideration and the decision not to reappoint should stand.

(4) If after appropriate inquiry the faculty committee determines that there is some factual basis to support the allegations of the faculty member, the matter should be referred to a hearing committee as provided in Appendix III. In the ensuing hearing, the burden of proving the facts constituting a violation of academic freedom or a constitutionally impermissible reason shall rest with the faculty member. If the faculty member does establish by a preponderance of the evidence such a legally impermissible basis for the decision not to reappoint, the faculty member is entitled to reappointment unless the institution can meet the burden of proof of establishing the existence of other valid reasons for the decision not to reappoint.

APPENDIX I

WRITTEN TERMS OF EMPLOYMENT

It is recommended that the institution provide each faculty member with a statement in writing of the terms of his or her employment, including special conditions, responsibilities and any special prerequisites. Such a document should cover such items as rank, salary, tenure provisions, whether the position is full-time or part-time, and the inclusive dates of the term of service. When the document includes a reference to a specific rule of the institution, the rule should normally be excerpted from the source publication and a copy affixed to the document. If the document refers to a large part of a lengthy publication, distribution of relevant portions of the publication to each faculty member may be infeasible. In this case, a copy of the publication should be placed in several readily accessible locations, such as the library and the offices of the deans, departmental chairmen, and chairman of the faculty or representative faculty body.

APPENDIX II

TENURE, FINANCIAL EXIGENCY, AND

PHASING OUT OF PROGRAMS

Cases of bona fide financial exigency, or the phasing out of institutional programs requiring reduction of faculty, may permit exceptions to tenure regulations in unusual circumstances.

(1) Faculty members involved in such adjustments in emergency situations should be given opportunities for appointment in related areas provided (a) they are qualified professionally to teach in such areas, and (b) such positions are available.

(2) Any tenured faculty member or faculty member whose term appointment

has not expired and who, on the basis of a bona fide financial exigency or the phasing out of an institutional program which, in either case, necessitates a reduction in staff, is selected for termination in breach of his or her contract right, shall be entitled to a hearing before an appropriate faculty committee which shall include the following minimal procedures:

- (a) furnishing the faculty member with a reasonably adequate written statement of the basis for the initial decision to lay-off;
- (b) furnishing the faculty member with a reasonably adequate description of the manner in which the initial decision had been arrived at;
- (c) making a reasonably adequate disclosure to the faculty member of the information and data upon which the decision-makers had relied; and
- (d) providing the faculty member the opportunity to respond.

In the hearing, the burden of proof resting with the faculty member is to establish by a preponderance of the evidence that his or her termination was based on a constitutionally impermissible reason, or was arbitrary or unreasonable.

(3) Any faculty member involved in such a readjustment process has the right to reappointment to his or her previous position if it is re-established within two calendar years.

APPENDIX III

DUE PROCESS PROCEEDINGS IN DISMISSAL CASES

Due process as set forth in this statement embodies a course of professional proceedings in line with rules and principles generally recognized in the academic community. Among these is the right of a tenured faculty member and a non-tenured faculty member during the term of his or her contract to a fair hearing before a faculty hearing committee of his or her peers. The procedure which

follows illustrates how the principles of due process can be adapted to individual institutions.

a. Personal Conference. When reason arises to question the fitness of a faculty member, the appropriate administrative officers should discuss the matter with him or her in personal conference. The matter may be terminated by mutual consent at this point, but if an adjustment does not result, the matter should be taken up by an advisory committee.

b. Advisory Committee. The advisory committee should be a standing committee elected by the faculty or an appropriate representative faculty body, appointed by the President of the Faculty Senate or other elected faculty representative body, or appointed by the chief executive officer of the institution from a faculty elected panel. The committee's proceedings may be informal and flexible. It should make such inquiry as it deems necessary, offer confidential advice to the faculty member and the administration and attempt to effect an adjustment. If none is effected, the advisory committee may recommend a hearing or other appropriate action. The chief executive officer may initiate a hearing whether or not one is recommended by the advisory committee.

c. Hearing Committee. The hearing committee should be an elected standing committee, or a standing or ad hoc committee appointed as noted in the paragraph above, not overlapping in membership with the advisory committee. The hearing committee should include only teaching faculty members, and in institutions where there is tenure the committee members should have tenure status. Each member should be subject to challenge for cause.

If a hearing is to be initiated, the chief executive officer shall send a letter to the faculty member stating with reasonable certainty the charges con-

stituting good cause for dismissal. Such letter shall state that should the faculty member so request, the hearing committee will conduct a hearing to determine whether the faculty member should be removed from his or her faculty position. The chief executive officer's letter should provide full information as to the procedural rights which will be accorded the faculty member in the hearing.

If the faculty member desires a hearing rather than resigning or accepting termination, he or she should write to the institution's chief executive officer within a reasonable period, such as thirty days, indicating that decision and responding to the statements given as grounds for dismissal. This statement should be referred to the hearing committee for initiation of the hearing procedure.

The hearing committee shall then set a time for the hearing which would allow the faculty member a reasonable time in which to prepare a defense to the charges made and shall notify the faculty member of the time and place. This notification shall include the names of the witnesses against the faculty member and the nature of the testimony of each. The testimony of a witness may not be used unless that witness is present at the hearing subject to cross-examination.

The faculty member has the right to be represented by an advisor of his or her own choosing, to present witnesses in his or her own behalf, to question all witnesses, to have a full stenographic record or electronic recording of the proceedings, as determined by the hearing committee, and to be provided access to the record of the proceedings with the right to copy such record.

Suspension of the faculty member from his or her usual duties during these proceedings is justified only if the welfare of the faculty member or that of

students, colleagues or other institutional employees is threatened by his or her continuance, or, if the continued presence of the faculty member would be materially and substantially disruptive of the regular operations of the institution. Any such suspension should be with pay and with appropriate provisions for useful duties whenever possible.

The hearing committee should allow oral arguments and written briefs by the chief executive officer or designated representative, and by the faculty member or designated representative. The committee should make explicit findings with respect to each of the grounds for removal presented and should recommend whether or not, in its judgment, there is good cause for dismissal. The committee's recommendation for dismissal or for such lesser action as it deems appropriate under the circumstances should be conveyed in writing to the chief executive officer and to the faculty member.

d. Governing Board. If the faculty member's appointment is proposed to be terminated by the chief executive officer, such officer should transmit the full report of the hearing committee and his or her recommendation to the institution's governing board. If the recommendation of the chief executive officer for termination conflicts with the recommendation of the hearing committee, the governing board should review the case based on the record of the hearing, with opportunity for argument by the principals or their representatives. If the recommendations of the chief executive officer and the hearing committee are in accord, the board may choose to limit such review as it may make to a review of the record of the hearing. The decision of the hearing committee should either be sustained or the proceedings be returned to the chief executive officer and to the committee with objections specified. In such case, the committee should

promptly reconsider, taking into account the stated objections and receiving new evidence if directed to do so by the Board. It should frame its reconsidered recommendation and communicate it in the same manner as before. After review of the hearing committee's reconsideration the governing board should render its own final written decision with a copy provided to each of the principals.

e. The Hearing. The hearing shall be closed unless the affected faculty member requests it to be open.